

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BAY STATE GAS COMPANY

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D.T.E. 03-79

**MOTION OF BAY STATE GAS COMPANY
FOR PROTECTIVE TREATMENT**

I. INTRODUCTION

Pursuant to 220 CMR 1.04(5)(a), Bay State Gas Company (“Bay State”) moves the Department of Telecommunications and Energy (“Department”) to grant protection from public disclosure, pursuant to G.L. c. 25, § 5D, to Bay State’s response to DTE-1-7, an information request issued by the Department on October 15, 2003. While the request was made in this docket, relative to Bay State’s petition for approval of a precedent agreement and related letter agreement with Tennessee Gas Pipeline Company (“Tennessee”), in order to be complete, the response necessarily includes confidential information regarding the terms and pricing provisions of the Special Firm Transportation Agreement, by and between Bay State and Wyeth Pharmaceuticals, Inc. (“Wyeth”).

In support of its request for protection, Bay State states the following.

**II. THE MATERIALS ARE A TYPE THAT MAY BE PROTECTED
APPROPRIATELY BY THE DEPARTMENT**

A. Standard of Review

Pursuant to G.L. c. 25, § 5D, the Department is authorized to protect from public disclosure “trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings.”

Towards this end, the Department has developed a three-part standard for assessing requests for protective treatment. First, the information for which protection from disclosure is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” Second, the party seeking protection from disclosure must overcome the statutory presumption that the public is benefited by disclosure of that information by “proving” the need for non-disclosure. Finally, the Department will protect only so much of the information as is necessary to meet the established need. See, e.g., Western Massachusetts Electric Co., D.T.E. 99-56 (1999); Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U. 95-59-B/95-80/95-112/96-13, Procedural Order (Sept. 7, 1997).¹

B. Items for Which Protective Treatment is Sought

In its information request DTE-1-7, the Department asked:

Please refer to page 3, paragraph 6 of the Petition for Approval. The Company states, “if the Department denies the Wyeth contract, Bay State may renegotiate the design and location of the lateral facilities.” Would the proposed Tennessee contract still be prudent without the Wyeth Contract? Has the Sendout model been run without inclusion of the Wyeth Contract? If so, please provide the results. If not, please run this data through the Sendout model and provide the results. Please also explain to what alternative “design and location” the Company is referring.

¹ Appropriate considerations with respect to the public interest include an assessment of the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., Berkshire Gas Co., D.P.U. 93-187/188/189/190 (1994); Boston Gas Co., D.P.U. 92-259 (1993); Essex County Gas Co., D.P.U. 96-105 (1996).

In order to respond to the Department's inquiry regarding the impact of the Wyeth Agreement on the Tennessee precedent agreement and related letter agreement, Bay State must discuss specifically the terms of the Wyeth Agreement and the competitive benefits provided by the precedent agreement with and without the Wyeth arrangement. The terms that are discussed in Bay State's response to DTE-1-7 that provide detailed information about the Bay State/Wyeth Agreement are competitively sensitive to both Bay State and to Wyeth. See e.g., Motion for Protective Treatment, filed with and approved as a part of Bay State's filing of the Wyeth Transportation Agreement.

C. Bay State's Response to DTE-1-7 Warrants Protection Under the Department's Standard for Protective Treatment

Bay State's response to DTE-1-7 warrants protection under the Department's existing standards. First, the term of the agreement, the price of the agreement, the bargains and benefits for Bay State and for Wyeth constitute competitively sensitive information. These provisions reflect lengthy negotiation and were negotiated with the understanding that the uniquely negotiated features of value would be competitively sensitive to both parties.

In particular, if the Department permitted public disclosure of Bay State's response to DTE-1-7, Bay State would be disadvantaged in its negotiations with others for future special pricing agreements, compromising the positions it may seek to take in future negotiations with other parties.

In addition, Wyeth may well face competitive harm by the public disclosure of these provisions. As argued in its Motion for Protective Treatment

granted as part of the Department's approval of the Wyeth Agreement, revealing the pricing and term provisions of the Transportation Agreement may expose the base elements of Wyeth's fixed costs of production to the marketplace and impede Wyeth's ability to negotiate based upon better terms, whether for sale of its products or for the provision to Wyeth of other services. This may place Wyeth at a competitive disadvantage relative to other market participants not subject to regulatory disclosure. Wyeth is not a party to this proceeding relative to seeking approval of the Tennessee precedent agreement and cannot make the request for protective treatment. Accordingly, Bay State's request for confidential treatment also protects the legitimate interests of Wyeth in protection of this information from public disclosure.

III. CONCLUSION

WHEREFORE, for the reasons provided, Bay State respectfully requests that the Department grant Bay State Gas Company's Motion for Protective Treatment over Bay State's response to DTE-1-7.

Respectfully submitted,
BAY STATE GAS COMPANY

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